STATE OF SOUTH CAROLINA COUNTY OF RICHLAND STATE MEDIA COMPANY, THE POST AND COURIER, INC., GANNETT GP MEDIA, INC., SOUTH CAROLINA PRESS ASSOCIATION, SOUTH CAROLINA BROADCASTERS ASSOCIATION, THE ASSOCIATED PRESS, PLAINTIFFS, vs. SOUTH CAROLINA HOUSE REPUBLICAN CAUCUS, DEFENDANT.	IN THE COURT OF COMMON PLEAS Civil Action No. 2017-CP-40-02523 **ORDER**

This matter came before me for trial on January 25, 2019. Present before me were counsel for Plaintiffs, Jay Bender, Esq., and counsel for Defendant, Jennifer J. Hollingsworth, Esq. The record before the Court included Stipulations of Fact as further described herein, as well as the Affidavits previously filed in support of summary judgment and briefing related thereto, and other evidence addressed in the pre-trial briefs and oral arguments of each party. Plaintiffs introduced one exhibit at the hearing, which the Court admitted over Defendant's objection. Following the hearing, the Court received additional briefing prior to closing the record.

Having heard the arguments of counsel and weighing all of the evidence in the record, the Court concludes that Plaintiffs are not entitled to declaratory or injunctive relief against Defendant.

STATEMENT OF THE CASE

Plaintiffs filed this action on April 27, 2017, seeking declaratory and injunctive relief under the South Carolina Freedom of Information Act, codified at South Carolina Code Section 30-4-10, *et seq*. (1976) (the "FOIA" or "Act"). An Amended Complaint was filed on May 2, 2017. The Amended Complaint seeks an order declaring that Defendant South Carolina House Republican

Caucus is a public body under the FOIA in possession of public records, and also that its "meetings are to be public under the FOIA, that representatives of Plaintiffs are allowed to attend and record the meetings, and that the failure of Defendant to allow representatives of Plaintiffs to attend and record its meetings is a violation of the FOIA." This Court has jurisdiction over the subject matter of this action pursuant to Section 30-4-100(A) of the FOIA, which vests the circuit court with authority to order declaratory and/or injunctive relief for violations of the Act. S.C. Code Ann. § 30-4-100(A).

As reflected in the pleadings and further addressed in briefing, Plaintiffs State Media Company and The Post and Courier, Inc. are corporations organized and existing under the laws of the State of South Carolina. Plaintiffs South Carolina Press Association and South Carolina Broadcasters Association are associations comprised of newspaper members and radio and television broadcasting members, organized as not for profit corporations under the laws of the State of South Carolina. Plaintiff Gannet GP Media, Inc. is a corporation organized and existing under the laws of the State of Delaware and authorized to conduct business in South Carolina. Plaintiff The Associated Press is a corporation organized and existing under the laws of the State of New York and authorized to conduct business in South Carolina. Defendant is a legislative caucus of the South Carolina House of Representatives.

Following service of the Amended Complaint, Defendant filed a Motion to Dismiss asserting that the dispute represented a non-justiciable political question. The Motion was denied by Order dated November 9, 2017. Following the dismissal of an interlocutory appeal to the Court of Appeals, Defendant filed its Answer. The parties thereafter filed cross Motions for Summary Judgment under Rule 56, SCRCP, which were denied by Order dated September 4, 2018.

Following the exchange of written discovery, the parties filed Stipulations of Fact on December 17, 2018 and determined the matter was ready for trial.

BURDEN OF PROOF

"Where an action is filed for declaratory judgment seeking affirmative relief, the movant must prove his material allegations by a preponderance of the evidence." *Vermont Mut. Ins. Co. v. Singleton*, 316 S.C. 5, 10, 446 S.E.2d 417, 421 (citing *Martin v. Cantrell*, 225 S.C. 140, 81 S.E.2d 37 (1954)). As such, Plaintiffs bore the burden of proving the "material allegations of [the Amended Complaint] by the greater weight or preponderance of testimony." *Martin* at 144, 81 S.E.2d at 38–39.

FINDINGS OF FACT

Having carefully considered the entirety of the information and evidence before the Court as reflected in the Court's file, I make the following findings of fact by a preponderance of the evidence:

1. The Stipulations of Fact entered by the parties are stated below verbatim and taken as true for purposes of this action:

(a) Defendant is a tax-exempt entity organized pursuant to Section 527 of the United States Internal Revenue Code (26 U.S.C. §527).

(b) Defendant's membership is comprised of Republican Members of the South Carolina House of Representatives who have voluntarily associated themselves with the organization.

(c) Defendant's members pay annual dues, currently Two Hundred and no/100 ($200.00) Dollars per member.

(d) The entirety of Defendant's operating funds, other than membership dues, are raised through private donation.

(e) Defendant's single employee occupies one office that opens to a reception area shared with the offices of two Members of the House of Representatives in the Blatt Building, a building owned by the State of South Carolina. The Defendant's single office is approximately 167.67

square feet and one-half of the shared reception area is approximately 173.3750 square feet. Defendant has use of one telephone line and two computers in this space.

(f) Rule 3.13 of the Rules of the House of Representatives of South Carolina provides:

> Each legislative caucus occupying office space in the Blatt Office Building may pay to the Clerk of the House of Representatives an amount, determined by the Clerk, for the use of office space by each caucus. Each caucus may also pay an amount for use of state-owned office related equipment including, but not limited to, copying services, computer equipment, and software and related connection charges for internet access and telephone equipment and service. Each legislative caucus may make payment for equipment and services in the manner to be determined by the Clerk.

(g) Defendant paid rent for the time period of January 17, 2007 through June 30, 2007, an invoiced amount of $2,354.74 on March 21, 2007. Defendant has received no subsequent invoices nor made further payments.

(h) Defendant uses a multi-purpose room in the Blatt Building to hold meetings during the legislative session, typically reserving the space to meet two times per month. The multi-purpose room is available for reservation and use by other legislative caucuses of the House of Representatives and other outside associations and interest groups.

(i) Defendant is not a committee of the South Carolina House of Representatives.

(j) Defendant does not have a vote on matters in the South Carolina House of Representatives.

(k) Defendant does not receive public funds.

(l) Defendant does not expend public funds nor does Defendant manage the expenditure of public funds.

(m) On May 19, 2006, the Office of the Attorney General of South Carolina issued an advisory opinion addressing the applicability of the Freedom of Information Act to legislative caucus activity. The Opinion concluded at that time that a legislative caucus is subject to the Freedom of Information Act because in the view of that Office, the legislative caucus was supported by public funds based on the use of office space rent free and use of office equipment and that no *de minimus* exception to the public support analysis exists. The Opinion further addressed the options for the Legislature to provide for an exemption for caucuses by statute or by rule of either house pursuant to that house's constitutional power to make rules.

(n) The authority to adopt rules of procedure is vested in each house of the General Assembly by the South Carolina Constitution.

(o) Rule 4.5 of the Rules of the House of Representatives of South Carolina was amended on January 17, 2007, along with other amendments to the Rules as set forth in House Resolution 3297, and states in pertinent part:

> All meetings of all committees shall be open to the public at all times, subject always to the power and authority of the Chairman to maintain order and decorum with the right to go into Executive Session as provided for in the South Carolina Freedom of Information Act, Title 30, Chapter 4 of the 1976 Code of Laws of South Carolina, as amended. Provided, a legislative caucus as defined by Section 2-17-10 of the 1976 Code of Laws of South Carolina, as amended, and its meetings are not subject to the provisions of Title 30, Chapter 4 of the 1976 Code of Laws of South Carolina, as amended.

This Rule has been adopted during subsequent legislative sessions and remains in effect today.

(p) Rule 4A of the Rules of the Senate of South Carolina was amended on January 13, 2009, along with other amendments to the Rules as set forth in Senate Resolution 233, and states in pertinent part:

> Except for meetings to elect the Majority Leader or Minority Leader or take any other formal action, meetings of party caucuses are exempt from the Freedom of Information Act.

This Rule has been adopted during subsequent legislative sessions and remains in effect today.

(q) Cassie Cope, at the time a reporter for *The State* newspaper which is published by plaintiff State Media Company, requested on or about March 27 and 29, 2017, pursuant to the South Carolina Freedom of Information Act (S.C. Code Ann. §§30-4-10, *et seq.*), copies of documents provided by Defendant to State Law Enforcement Division in response to a Grand Jury Subpoena.

(r) Defendant responded by letter dated April 7, 2017, to the request for records through its attorney, Mark C. Moore, who wrote:

> I have carefully reviewed your requests and the applicable law and have concluded that your requests are not appropriately directed to the SCHRC. Therefore, we must respectfully decline to produce the records referenced in your requests.

(s) A "legislative caucus" is not included in the definition of "public body" in the South Carolina Freedom of Information Act at S.C. Code Ann. § 30-4-20(a).

(t) An amendment to the definition of "public body" in the South Carolina Freedom of Information Act at S.C. Code Ann. § 30-4-20(a) to include a "legislative caucus" has previously been proposed and withdrawn without approval.

(u) The Rules of the House of Representatives of South Carolina adopted during some sessions prior to January 17, 2007 have required by Rule that meetings of legislative caucuses be open to the public pursuant to the Freedom of Information Act. This Rule was deleted and removed by a subsequent Session of the House and is no longer in effect.

2. Plaintiffs assert the following in support of the requested relief in this action: (1) Defendant is a public body under the FOIA; (2) Defendant is not exempt from the FOIA pursuant to rules adopted by the South Carolina House of Representatives; and (3) Defendant's failure to allow inspection and copying of public records and failure to allow representatives of Plaintiffs to attend and record its meetings is a violation of the FOIA entitling Plaintiffs to declaratory and injunctive relief.

3. Defendant denies that Plaintiffs are entitled to declaratory or injunctive relief under the FOIA because: (1) Plaintiffs have failed to prove entitlement to the relief sought under the FOIA; (2) Defendant is not a public body under the FOIA; and (3) Defendant is exempt from application of the FOIA pursuant to a procedural rule adopted by the South Carolina House of Representatives.

A. Failure to State a Cause of Action under the FOIA.

4. Plaintiffs offered the affidavit testimony of Cassie Cope, formerly a reporter for Plaintiff State Media Company, as evidence of a request for records made to Defendant under the FOIA on March 29, 2017, that Defendant responded to but did not provide the records requested. Ms. Cope also stated generally that "during her time as a reporter for the State" she had "sought to

attend meetings of the House Republican Caucus, but had been refused admittance to the meetings." (Cope Aff. ¶ 10). Ms. Cope's testimony does not include any evidence of one or more dates on which she was "refused admittance." Plaintiffs also submitted Defendant's Answers to Plaintiffs' First Request for Admission for the following response: "Admit defendant has denied access by reports to its meetings. ANSWER: Defendant ADMITS only so much of the Request as asserts that media reporters have not allowed to attend Defendant's meetings." (Def.'s Ans. Ps.' First Req. Admit #17). There is no other evidence offered by Plaintiffs establishing a date on which a representative of Plaintiffs requested and was denied admittance to Defendant's meetings.

5. The FOIA provides: "A citizen of the State may apply to the circuit court for a declaratory judgment, injunctive relief, or both, to enforce the provisions of this chapter in appropriate cases if the application is made no later than one year after the date of the alleged violation . . . ." S.C. Code Ann. § 30-4-100(A). "The legislature has specially conferred standing upon any citizen of South Carolina to bring a FOIA claim against a public body for declaratory or injunctive relief, or both. Appellant has plead that he is a citizen of the State and that FOIA has been violated. Nothing more is required." *Freemantle v. Preston*, 398 S.C. 186, 195, 728 S.E.2d 40, 45 (2012). I find that the FOIA's standing provision "permits any citizen to apply to the circuit court for injunctive relief." *Fowler v. Beasley*, 322 S.C. 463, 466, 472 S.E.2d 630, 632 (1996) (holding citizens of Charleston County and/or members of legislative delegation had standing under the FOIA). I further find that the action must be brought no later than one year after the date of the alleged violation of the FOIA.

6. "Statutory standing exists, as the name implies, when a statute confers a right to sue on a party, and determining whether a statute confers standing is an exercise in statutory interpretation." *Youngblood v. S.C. Dept. of Social Services*, 402 S.C. 311, 317, 741 S.E.2d 515,

518 (2013). The requirements for standing under the FOIA statute is straightforward – a citizen of this State may apply to this Court for relief. *See* S.C. Code Ann. § 30-4-100(A). "Elements of standing, however, are not mere pleading requirements but rather an indispensable part of the plaintiff's case; therefore, each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stage of the litigation." *Town of Arcadia Lakes v. S.C. Dept. of Health and Envtl. Control*, 404 S.C. 515, 529, 745 S.E.2d 385, 392 (Ct. App. 2013) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)).

7. I find that Plaintiffs represent three types of entities alleging entitlement to relief under the FOIA: (1) corporations organized and existing under the laws of South Carolina; (2) associations of media entities organized as not for profit corporations under the laws of South Carolina; and (3) corporations organized and existing under the laws of foreign states. Plaintiffs conceded in post-trial briefing that Plaintiffs Gannet GP Media, Inc., and The Associated Press are not citizens of South Carolina and therefore do not have standing under the FOIA. As such, and as reflected below, the Court dismisses with prejudice Plaintiffs Gannet GP Media, Inc., and The Associated Press from this action.

8. Plaintiffs assert that the remaining entities, each organized and existing under the laws of the State of South Carolina, are "citizens" within the meaning of the FOIA. Defendant asserts that "citizen" does not include a corporation. "[D]etermining whether a statute confers standing is an exercise in statutory construction." *S.C. Dept. of Social Services v. Boulware*, 422 S.C. 1, 6, 809 S.E.2d 223, 226 (2018). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will." *Id.* at 8, 809 S.E.2d at 226.

9. In the FOIA, the General Assembly provided a clear statement as to "who" is authorized to apply to this Court for relief under its terms – "A citizen of the State." S.C. Code Ann. § 30-4-100(A). The explicitly stated "findings and purpose" of the FOIA at Section 30-4-15 are that: "The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that *citizens* shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy." S.C. Code Ann. § 30-4-15 (emphasis added).

10. The word "citizen" appears three times in the FOIA – twice in the "findings and purpose" and again in the standing provision of Section 30-4-100(A). The FOIA does not include a definition of "citizen," but the term "person" is defined and "includes any individual, corporation, partnership, firm, organization or association." S.C. Code Ann. § 30-4-20(b).

11. "When faced with an undefined statutory term, the Court must interpret the term in accord with its usual and customary meaning. Courts should consider not merely the language of the particular clause being construed, but the undefined word and its meaning in conjunction with the purpose of the whole statute and the policy of the law." *Branch v. City of Myrtle Beach*, 340 S.C. 405, 409-10, 532 S.E.2d 289, 292 (2000). Black's Law Dictionary defines "citizen" as "[s]omeone who, by either birth or naturalization, is a member of a political community, owing allegiance to the community and being entitled to enjoy all of its civil rights and protections; a member of the civil state, entitled to all its privileges." BLACK'S LAW DICTIONARY (10th ed. 2014).

12. In a case evaluating whether an autopsy report is exempt from disclosure as a "medical record" under the FOIA, where "medical record" was undefined, the Supreme Court held that an autopsy report "fit neatly within that general understanding of medical records" as found

in the Merriam-Webster Dictionary Online. *Perry v. Bullock*, 409 S.C. 137, 141, 761 S.E.2d 251, 253 (2014).

13. Merriam-Webster Dictionary Online defines "citizen" as:

> 1: an inhabitant of a city or town
> *especially*: one entitled to the rights and privileges of a freeman
> 2a: a member of a state
> b: a native or naturalized person who owes allegiance to a government and is entitled to protection from it
> // She was an American *citizen* but lived most of her life abroad.
> 3: a civilian as distinguished from a specialized servant of the state
> // Soldiers were sent to protect the *citizens*.

https://www.merriam-webster.com/dictionary/citizen (emphasis in original). I find that the conclusion that a corporation or an association of entities is not a citizen within the meaning of the FOIA "fit[s] neatly within that general understanding of [citizen]" as found in these common secondary sources. *See Perry* at 141, 761 S.E.2d at 253.

14. I further find that a usual and customary meaning of "citizen" as an individual person with constitutionally protected rights such as that to vote is consistent with the General Assembly's expressly stated finding that the FOIA is tied to our "democratic society" and the right of citizens to have knowledge of the means by which public policy is formed. *See* S.C. Code Ann. § 30-4-15. This meaning is consistent with judicial precedent that the "purpose of FOIA is to protect citizens from secret government activity." *Seago v. Horry County*, 378 S.C. 414, 422, 663 S.E.2d 38, 42 (2008). In *Hemphill v. Orloff*, 277 U.S. 537 (1928), the United States Supreme Court rejected the concept that a corporation is considered a citizen of the State of all purposes: "Whenever a corporation makes a contract, it is the contract of the legal entity-of the artificial being created by the charter-and not the contract of the individual members. The only rights it can claim are the rights which are given to it in that character, *and not the rights which belong to its members as citizens of a state*." *Id.* at 549-50 (emphasis added).

15. Plaintiffs assert that it has long been the policy of the State to find that a corporation is a citizen of the state where incorporated, and cites to *Blue Ridge Power Company v. Southern Railway Company*, 122 S.C. 222, 115 S.E. 306, a 1922 South Carolina Supreme Court opinion. This opinion, and others referenced by Plaintiffs, address only the exercise of jurisdiction over foreign and domestic corporations. In fact, the *Wilson* opinion quoted by Plaintiffs explains: "A corporation is indisputably presumed to be composed of citizens of the state creating it, *and for purposes of federal jurisdiction the citizenship of its corporators is imputed to the corporation*." *Wilson v. Southern Ry. Co.*, 64 S.C. 162, 36 S.E. 701, 702 (1900) (emphasis added). I find that these opinions do not address the question of whether a domestic corporation is a "citizen of the State" for purposes of statutory standing.

16. Plaintiffs also assert that the question of whether a corporation is a "citizen" for purposes of the FOIA has been addressed, and cites to a circuit court ruling from 2016. Defendant argues the 2016 circuit court order has no precedential value and, regardless, has been appealed to the South Carolina Court of Appeals. The order does not contain any analysis of the statutory language at issue and only summarily concludes that "the General Assembly intended that corporations . . . be entitled to enforce the FOIA." Notwithstanding the fact that the order has no precedential import to this Court, I find that the summary conclusion of legislative intent is insufficient to support a construction of the statute that is contrary to the plain language of Section 30-4-100(A).

17. The FOIA defines "person" broadly to include any individual, corporation, association, among others, but limits the remedy of enforcement to citizens of the State, reflecting a legislative intent not to authorize all "persons" to seek injunctive and declaratory relief, even though afforded the ability to participate in the public process. *See* S.C. Code Ann. §§ 30-4-20(b),

-30(A), -60, 100(A); *see also* BLACK'S LAW DICTIONARY (10th ed. 2014) (connecting "citizen" to rights obtained by birth or naturalization, and noting separately a corporation may have a designation "for diversity-jurisdiction purposes.") I find that the meaning ascribed by Plaintiffs amounts to an impermissible rewriting of the standing provision to substitute the otherwise defined term "person" in place of "citizen" in Section 30-4-100(A).

B. Public Body under the FOIA.

18. Even if Plaintiffs had standing under the FOIA, this Court finds Plaintiffs' action fails on the merits. A "public body" is defined by the FOIA in pertinent part as:

> any department of the State, a majority of directors or their representatives of departments within the executive branch of state government as outlined in Section 1-30-10, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts, and special purpose districts, or ***any organization, corporation, or agency supported in whole or in part by public funds or expending public funds,*** including committees, subcommittees, advisory committees, and the like of any such body by whatever name known, and includes any quasi-governmental body of the State and its political subdivision . . . .

S.C. Code Ann. § 30-4-20(a) (emphasis added). Plaintiffs allege that Defendant is a "public body" because it receives partial support from public funds. Defendant denies that it is a "public body" under the FOIA.

19. The parties agree and do not dispute that a legislative caucus is not included within the definition. (Stipulation #19, *supra* at ¶ 1(s)). I find that Plaintiffs therefore have the burden of proving that Defendant is an "organization, corporation or agency supported in whole or in part by public funds or expending public funds" in order to fall within the scope of "public body" in the FOIA. S.C. Code Ann. § 30-4-20(a).

20. The parties stipulated that Defendant is a "tax-exempt entity" that is "comprised of Republican Members of the South Carolina House of Representatives who have voluntarily associated themselves" and "pay annual dues," by which the "entirety of Defendant's operating

funds" are raised in addition to private funds. (Stipulations #1-4, *supra* at ¶¶ 1(a)-1(d)). It is thus undisputed that Defendant is not supported in whole by public funds. (*See* Stipulation #4, *supra* at ¶ 1(d)). Finally, it is stipulated that Defendant does not receive public funds, does not expend public funds, and does not manage the expenditure of public funds. (Stipulations #11-12, *supra* at ¶¶ 1(k)-1(l)). I therefore find Plaintiffs' argument that Defendant is "supported . . . in part by public funds" is necessarily based upon the indirect financial benefit to Defendant from rent-free use of an office and shared reception area, two computers and telephone service in the Blatt Building, a building owned by the State of South Carolina. (*See* Stipulations #5-#7, *supra* at ¶¶ 1(e)-1(g)).

21. Plaintiffs rely on *Weston v. Carolina Research and Development Foundation*, 303 S.C. 398, 401 S.E.2d 161 (1991), to conclude that this alleged partial support renders Defendant a "public body" for purposes of the FOIA. In *Weston*, the Supreme Court evaluated the applicability of the FOIA to a non-profit foundation operating "exclusively for the benefit of the University of South Carolina." *Id.* at 399, 401 S.E.2d at 162. The *Weston* Court analyzed four transactions involving the foundation, each of which included the receipt and/or expenditure of substantial funds on behalf of the University, in amounts ranging from $2,000,000 to $16,300,000. *See id.* at 401-03, 401 S.E.2d at 163-64. The Supreme Court explained:

> when a block of public funds is diverted *en masse* from a public body to a related organization, or when the related organization undertakes the management of the expenditure of public funds, the only way that the public can determine with specificity how those funds were spent is through access to the records and affairs of the organization receiving and spending the funds.

Weston at 404, 401 S.E.2d at 165.

22. Defendant argues that Plaintiffs' reading of *Weston* amounts to a categorical rule that any support in any amount for any reason from the State to a private party is sufficient to transform that private party into a public body under the FOIA. Defendant asserts that this reading of *Weston* was summarily rejected by the South Carolina Supreme Court in

DomainsNewMedia.com v. Hilton Head Island-Bluffton Chamber of Commerce, 423 S.C. 295, 814 S.E.2d 513 (2018), *reh'g denied* June 26, 2018.

23. In *DomainsNewMedia.com*, the Supreme Court explicitly stated that *Weston* "rejected the suggestion that the mere receipt or expenditure of public funds automatically and categorically transformed an otherwise private entity into a public body triggering the full panoply of FOIA requirements." 423 S.C. at 305, 814 S.E.2d at 518. At issue in the case was the receipt and expenditure of public tourism funds by a private nonprofit corporation, and the Supreme Court concluded "as a matter of discerning legislative intent, that the General Assembly did not intend the Chamber to be considered a public body for purposes of the FOIA as a result of its receipt and expenditure of these specified funds." *Id.* at 297, 814 S.E.2d at 514.

24. The Supreme Court's opinion in *DomainsNewMedia.com* specifically addresses an argument similar to that of Plaintiffs that any receipt of public funds is sufficient to classify a private entity as a public body:

> This is the main point of divergence with the dissenting opinion. While we take no issue with the important, indeed vital, goals served by FOIA, as we acknowledged above, the dissent would classify the Chamber as a public body for FOIA purposes simply as a result of its receipt of public funds. This is so, according to the dissent, because we must apply the plain language of one phrase in the FOIA statute. **The dissent would apply all of FOIA to any organization that receives any public funds. While we acknowledge that in many instances the receipt of public funds will subject the organization to FOIA, the dissent's categorical rule is contrary to this Court's discernment of legislative intent in *Weston*.** The dissent goes further and accuses us of "employ[ing] an elaborate analysis to avoid the plain language of the FOIA." Not so. We are remaining faithful to this Court's decisional framework in *Weston*, to which the legislature for more than a quarter century has not responded, much less superseded. **If the dissent's "look only to FOIA" approach were dispositive, *Weston* could not stand as the Court held that FOIA does not always and automatically apply when public funds are received by an organization.** As is our general stance, we elect to honor our precedents and respect the authority of the legislature to respond to (including superseding) our construction of statutes. If the General Assembly now disagrees with *Weston*, or our decision today, it lies within the province of the legislature to respond and overrule our precedents.

DomainsNewMedia.com at n.7 (emphasis added).

25. Defendant argues that both *DomainsNewMedia.com* and *Weston* as explained therein establish that Defendant, a private entity that does not receive, spend or manage the expenditure of public funds, is not transformed into a public body and therefore subjected to the "full panoply of FOIA requirements" solely as a result of the incidental benefits received by all legislative caucuses of the House of Representatives. I agree and find that both *Weston* and *DomainsNewMedia.com* support Defendant's position that the mere indirect financial benefit identified by Plaintiffs is insufficient to classify Defendant as a "public body" for purposes of the FOIA.

C. Exemption by Legislative Rule.

26. As to the applicability of the Rules of Procedure of the South Carolina House of Representatives, the parties stipulated to many of the most significant facts relevant to this issue. Specifically, the at-issue portion of Rule 4.5 was adopted by the House over a decade ago on January 17, 2007, as part of the normal course of implementing Rules of the House, and has been adopted by each session of the House of Representatives since then. (Stipulation #15, *supra* at ¶ 1(o)). The authority to adopt rules of procedure are vested in each house of the General Assembly by the South Carolina Constitution. (Stipulation #14, *supra* at ¶ 1(n)).

27. Similarly, the South Carolina Senate has by procedural rule limited the FOIA's application to legislative caucuses. Rule 4A of the Rules of the Senate was amended on January 13, 2009, along with other amendments to the Rules as set forth in Senate Resolution 233, and states in pertinent part: "Except for meetings to elect the Majority Leader or Minority Leader or take any other formal action, meetings of party caucuses are exempt from the Freedom of Information Act." (Stipulation #16, *supra* at ¶ 1(p)).

28. Plaintiffs assert that the language in House Rule 4.5 is ineffective as a "proviso" because the rule otherwise addresses "committees" of the House of Representatives and a legislative caucus is not a "committee" of the House. Ironically, Plaintiffs reference rules of statutory construction to argue that this legislative enactment is ineffective to accomplish its stated purpose to limit the FOIA's application. The Rule in its entirety reads:

> All meetings of all committees shall be open to the public at all times, subject always to the power and authority of the Chairman to maintain order and decorum with the right to go into Executive Session as provided for in the South Carolina Freedom of Information Act, Title 30, Chapter 4 of the 1976 Code of Laws of South Carolina, as amended. *Provided*, a legislative caucus as defined by Section 2 17 10 of the 1976 Code of Laws of South Carolina, as amended, and its meetings are not subject to the provisions of Title 30, Chapter 4 of the 1976 Code of Laws of South Carolina, as amended.
>
> No committee shall file a report unless the committee has met formally at an authorized time and place with a quorum present. All standing committees of the House shall prepare and make available for public inspection, in compliance with Section 30-4-90 of the 1976 Code of Laws of South Carolina, as amended, the minutes of full committee meetings. Such minutes need not be verbatim accounts of such meetings but shall include those matters required by the above mentioned Freedom of Information Act.

Rule 4.5 of the Rules of the South Carolina House of Representatives (as original).

29. Setting aside that the cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature, it is difficult to discern any more appropriate place to address the applicability of the FOIA to a legislative caucus than a rule otherwise addressing the applicability of the FOIA to meetings of members of the House of Representatives. Consequently, I reject Plaintiffs' construction that the Rule is of no effect because of its placement within the House Rules.

30. There is no judicial precedent in South Carolina evaluating this exercise of constitutional rulemaking authority; however, I find the Georgia Supreme Court's consideration of the question posed here and the use of legislative rule to limit a FOIA's application informative:

> These rules were adopted by both the House and the Senate after passage of the 'Sunshine Law,' and they show that both houses considered themselves free to adopt their own rules of internal procedure even through such rules were inconsistent with the 'Sunshine law.' We do not believe it can reasonably be argued that the House or Senate cannot pass an internal rule for its own procedures that is in conflict with a statute formerly enacted.

Coggin v. Davey, 211 S.E.2d 708, 710 (Ga. 1975). I find the reasoning of the Iowa Supreme Court in *Des Moines Register v. Dwyer*, 542 N.W.2d 491 (Iowa 1996), addressing legislative "rules of proceedings" similarly insightful. The court there held that the constitutional authority of the legislature to determine its own rules trumps any statute purporting to limit that authority:

> In our opinion even if the Legislature were to amend Chapter 28A to specifically include itself and its various committees, either house could nevertheless thereafter at any time by rule and without the concurrence of the other house close its sessions, committee meetings or any of them. *No mere statute of one General Assembly can abridge the power conferred by the people upon each house to "determine its rules of proceedings."*

Id. at 497 (quoting 1974 Op. Atty. Gen. 41 (February 6, 1973)) (emphasis in *Des Moines Register* opinion); *see also* Charles F. Reid, *The South Carolina Legislature's Power Over Itself – Legislative Rules v. Statutory Laws*, 13 J. AM. SOC'Y LEGIS. CLERKS & SECRETARIES 3 (2007).

CONCLUSIONS OF LAW

Based upon the above findings of fact, the Court concludes the following as a matter of law:

1. The Freedom of Information Act, codified at Section 30-4-10, *et seq.*, of the South Carolina Code of Laws ("FOIA" or the "Act"), vests this Court with subject matter jurisdiction over this action. S.C. Code Ann. § 30-4-100(A). The Act authorizes a "citizen of the State" to seek declaratory and/or injunctive relief for violations of the Act "if the application is made no later than one year after the date of the alleged violation or one year after a public vote in public session, whichever comes later." S.C. Code Ann. § 30-4-100(A). "The Freedom of Information Act

(FOIA), S.C. Code Ann. § 30-4-100 (1991), permits any citizen to apply to the circuit court for injunctive relief." *Fowler v. Beasley*, 322 S.C. 463, 466, 472 S.E.2d 630, 632 (1996).

2. The declared purpose of the FOIA is that the "General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy." S.C. Code Ann. § 30-4-10. "South Carolina's FOIA was designed to guarantee the public reasonable access to certain activities of the government." *Fowler* at 468, 472 S.E.2d at 633.

3. "[T]here is no constitutional right to obtain all the information provided by the FOIA laws." *McBurney v. Young*, 569 U.S. 221, 223 (2013). South Carolina's FOIA "subjects a 'public body' to record disclosure and open meeting requirements." *Disabato v. S.C. Assn. of School Adm'rs*, 404 S.C. 433, 442, 746 S.E.2d 329, 329 (2013). These requirements exist independent of any rights of enforcement, such rights being expressly limited to a "citizen of the State." S.C. Code Ann. § 30-4-100(A).

4. If a statute's meaning is plain and no ambiguity exists, no further interpretation is required. *See Hodges v. Rainey*, 341 .C. 79, 85, 533 S.E.2d 578, 581 (2000) ("Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute.") "When, as here, the statute is plain and unambiguous, it becomes the duty of the court to apply it literally because the legislative design is unmistakable." *Martin v. Ellisor*, 266 S.C. 377, 381, 223 S.E.2d 415, 417 (1976).

5. If the meaning of Section 30-4-100(A) is not plain, the Court may look to other principles of construction to interpret the statute. "A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers.

In interpreting a statute, the language of the statute must be read in a sense that harmonizes with its subject matter and accords with its general purpose." *Sparks v. Palmetto Hardwood, Inc.*, 406 S.C. 124, 128, 750 S.E.2d 61, 63 (2013). Where an undefined term is used more than once in a single statutory scheme, the meaning given should be consistent and consonant with the overall purpose of the Act. *See id.* at 129-30, 750 S.E.2d at 63-64.

6. "The canon of construction '*expressio unius est exclusion alterius*' or '*inclusio unius est exclusion alterius*' holds that 'to express or include one thing implies the exclusion of another, or of the alternative." *Hodges* at 86, 533 S.E.2d at 582 (quoting BLACK'S LAW DICTIONARY 602 (7th ed. 1999)). Expanding "citizen" to a meaning ascribed to a different term (*i.e.* "person") is not a reasonable construction of the statute and is contrary to the plain language and express purpose of the FOIA. I conclude that limiting enforcement authority to a "citizen of the State" evidences "the legislature's unmistakable intent" in drafting Section 30-4-100(A) that not all 'persons' are entitled to statutory standing under the FOIA. *See Freemantle* at 195, 728 S.E.2d at 44; *see also* S.C. Code Ann. § 30-4-20(b). Accordingly, I conclude that a "citizen of the State" does not include a corporation such as Plaintiffs here.

7. To be a "public body," Defendant must be "supported in whole or in part by public funds or expending public funds" within the meaning of the FOIA. As found herein, the entirety of Defendant's operating funds, other than membership dues, are raised through private donation. Defendant does not receive public funds, does not expend public funds, and does not manage the expenditure of public funds. Based on the facts found herein and supported by applicable precedent, I conclude that the indirect financial benefit received by legislative caucuses through the use of office space and equipment in the Blatt Building does not transform Defendant into a

public body for purposes of the FOIA. *See DomainsNewMedia.com*, 423 S.C. at 305, 814 S.E.2d at 518, n.7.

8. Subsequent to the enactment of the FOIA, both houses of the General Assembly have adopted procedural rules exempting legislative caucus activity from the FOIA. Plaintiffs have failed to prove that either house of the General Assembly "cannot pass an internal rule for its own procedures that is in conflict with a statute formerly enacted." *See Coggin*, 211 S.E.2d at 710. I therefore conclude that Defendant is exempt from the requirements of the FOIA pursuant to House Rule 4.5 of the Rules of Procedure for the South Carolina House of Representatives.

9. In light of the foregoing, I conclude Plaintiffs have failed to state a cause of action under the FOIA, Defendant is not a public body within the meaning of the FOIA, and Defendant is otherwise exempt from the FOIA by legislative rule. I therefore conclude that Plaintiffs are not entitled to declaratory or injunctive relief against Defendant.

THEREFORE, it is hereby ORDERED that:

1. Plaintiffs Gannet GP Media, Inc., and The Associated Press are DISMISSED WITH PREJUDICE for lack of statutory standing; and

2. Plaintiffs' request for declaratory and injunctive relief against Defendant is DENIED WITH PREJUDICE.

IT IS SO ORDERED this ____ day of February, 2019.

Robert E. Hood, Circuit Court Judge
Fifth Judicial Circuit

Richland Common Pleas

Case Caption: State Media Company , plaintiff, et al vs South Carolina House Republican Cacus

Case Number: 2017CP4002523

Type: Order/Other

So Ordered

s/ R.E. Hood #2164